

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
AT JACKSON

FILED BY ll D.C.  
05 OCT -3 PM 12:47

JOSEPH KYLE,

Plaintiff,

vs.

BENTON COUNTY, TENNESSEE, et al.

Defendant.

Civil Action No.1-04-1180-T/AN

THOMAS M. COULD  
CLERK, U.S. DISTRICT COURT  
WD OF T. JACKSON

PRETRIAL ORDER

In accordance with Rule 16, Fed. R. Civ. P. the following constitutes the Pretrial Order in this matter.

1. PARTIES.

The Court has previously granted summary judgment in part and declined to exercise jurisdiction over certain claims by Order entered on September 12, 2005. The remaining parties are the Plaintiff, Joseph Kyle, and the Defendants, Benton County, Tennessee and Jimmy Thornton.

2. JURISDICTION.

This is a civil rights claim pursuant to 42 U.S.C. § 1983 based upon alleged violations of the First and Fourteenth Amendments. The Court has jurisdiction pursuant to the provisions of 28 U.S.C. §§ 1331 and 1343.

3. PENDING MOTIONS.

There are no pending motions.

4. A SHORT STATEMENT OF THE CASE.

This is a lawsuit brought by Joseph Kyle under the federal Civil Rights Act whereby Joseph Kyle alleges that his civil rights were violated by Mayor Jimmy Thornton and

1 Benton County, Tennessee. The Defendants deny that they violated his civil rights.

2 5. PLAINTIFF'S CONTENTIONS.

3 Plaintiff was a critic of many aspects of Benton County, Tennessee government,  
4 including Jimmy Thornton. He regularly attended County Commission meetings and  
5 Committee meetings and spoke at such meetings. Jimmy Thornton was the chairman of  
6 the meetings. The County Commission had an informal rule that allowed the individual  
7 members of the public to speak at meetings but each person had a five-minute limit. There  
8 were no formal rules on topics that may be discussed but Mayor Thornton had an informal  
9 rule that prohibited members of the public to "bash" members of the Commission who were  
10 not present to defend themselves from "bashing" by the public.

11 In May of 2004 Plaintiff attended the County Commission meeting and was  
12 recognized to speak by Mayor Thornton. Plaintiff began speaking about the fact that one  
13 Commissioner had assaulted him after a Committee meeting and he had been verbally  
14 harassed by another Commissioner. Plaintiff also complained about his general  
15 dissatisfaction with the County Commission. Prior to Plaintiff's five minutes of speaking  
16 time expiring, Plaintiff was ordered removed from the meeting by Mayor Thornton.  
17 Plaintiff was removed by Benton County Sheriff's for disrupting a public meeting and  
18 charged criminally. The charges were eventually dismissed.

19 Prior to the May 2004 meeting, Mayor Thornton had admonished the public in  
20 County Commission meetings from applauding or showing verbal support for unfavorable  
21 comments made about the Commission but allowed applauding and verbal support for  
22 comments about the Commission that were favorable.

1 Plaintiff contends that the rules regarding no "bashing" of absent Commissioners  
2 was arbitrary and capricious and thus violations of Plaintiff's First and Fourteenth  
3 Amendment rights. All of this amounted to violations of the federal Civil Rights Act.

4 6. DEFENDANTS' CONTENTIONS.

5 Thornton is the County Mayor and, as such, is the presiding officer of the Benton  
6 County Commission. As the presiding officer, Thornton has an obligation to preserve a  
7 level of order at the meetings including the public portion hearing of the meetings. He has  
8 the discretion to recognize various persons who wish to speak on subjects at the meeting  
9 including the order in which they are recognized. Persons who are recognized are limited  
10 to a period of five (5) minutes in length. They are not required to take the entire five (5)  
11 minutes and when they indicate they are finished, Thornton recognizes others who wish  
12 to speak.

13 Both before and after the incident in question, Kyle, as well as many others, have  
14 been critical of the County Commission, most of which relate to taxation and budget issues  
15 as Benton County faces the cost of dearly needed upgrades to its jail and ever increasing  
16 costs related to providing services. Kyle has addressed the County Commission on  
17 numerous occasions, both before and after the incident, and has been critical or made  
18 personal attacks on a number of County officials, including Thornton, both inside and  
19 outside the commission meetings. On the night in question, Kyle initially did not address  
20 the County Commission but addressed the audience. He was told to address the County  
21 Commission. When it became evident that he was making personal attacks, not on  
22 Thornton, who would have allowed such attacks, but on two commissioners who were not  
23 present, he was interrupted and told he could not make attacks on persons not present to  
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1 defend themselves. The attacks involved incidents having nothing to do with county  
2 business or the commissioners' official conduct.

3 This was not an interference of his right to free speech but was a reasonable time,  
4 manner and place restriction. It has not prevented him from exercising his rights before  
5 or after the incident in question as will be shown. To the extent that it constitutes any such  
6 unreasonable restriction, it was *de minimus* at best.

7 Z. STATEMENT OF UNDISPUTED FACTS.

8 A. In May 2004, Joseph Kyle attended a County Commission meeting and was  
9 recognized to address the Commission at the public hearing or comment portion of the  
10 meeting.

11 B. Mayor Thornton was the chairmen of the County Commission and no formal  
12 rules were ever adopted regarding the content of speech by the general public at such  
13 meetings.

14 C. There was a rule that all persons who wished to speak at County Commission  
15 meetings were allowed to do so but they were limited to five minutes.

16 D. Mayor Thornton had an informal rule that the general public could not "bash"  
17 members of the County Commission who were not present to defend themselves.

18 E. Joseph Kyle had been a consistent critic of Mayor Thornton and certain  
19 members of the County Commission and County Government.

20 F. At the May 2004 County Commission meeting, Plaintiff was recognized to  
21 speak and began initially to address the audience and not the Commission. After being  
22 instructed to do so, Plaintiff began to address the commission. When he began to speak  
23 about alleged phone harassment by Commissioner Tommy Spence and an alleged assault  
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1 by Commissioner Dale Cunningham, both of whom were not present at the time, of the  
2 public hearing or comment portion of the meeting, Thornton told him he was not going to  
3 allow him to attack people who were not there to defend themselves.

4 G. Some of the Commissioners had left the meeting prior to the meeting being  
5 opened for comments from the general public.

6 H. Plaintiff was removed from the meeting by Sheriff's deputies and  
7 subsequently arrested for disrupting a public meeting. (This is admitted by the Defendants  
8 but Defendants dispute its relevance since the Court dismissed the claims as they related  
9 to the arrest and has found that probable cause existed and that Kyle was in violation of  
10 the meeting as a matter of law).

11 I. The criminal charges were eventually dismissed. (This is admitted by the  
12 Defendants but Defendants dispute its relevance since the Court dismissed the claims as  
13 they related to the arrest and has found that probable cause existed and that Kyle was in  
14 violation of the meeting as a matter of law).

15 8. CONTESTED ISSUES OF FACT.

16 A. Whether Kyle was told to sit down and was ruled out of order after he began  
17 to raise his voice and argue with Thornton.

18 B. Whether or not the rule regarding no bashing of absent Commissioners was  
19 designed to prevent negative comments about individual Commissioners.

20 C. Whether or not Mayor Thornton allowed raucous actions by the public at  
21 Commission meetings in response to positive comments about the Commission or  
22 Commissioners but not allow similar comments and actions for similar behavior in  
23 response to negative comments about the Commission or Commissioners.

1 D. Whether or not Plaintiff suffered any actual damages as a result of the actions  
2 of Mayor Thornton and Benton County, Tennessee.

3 E. If Thornton violated the Plaintiff's rights, whether such was done with malice  
4 or reckless indifference to his rights.

5 9. CONTESTED ISSUES OF LAW.

6 A. Whether Jimmy Thornton violated the First and Fourteenth Amendment  
7 rights of Plaintiff.

8 B. Whether the rules of the County Commission regarding bashing of  
9 Commission members were policy or custom of Benton County, Tennessee.

10 C. Whether the Plaintiff is entitled to punitive damages.

11 D. Whether the Plaintiff is entitled to attorneys' fees and, if so, the amount of  
12 such fees.

13 10. PLAINTIFF'S EXHIBITS.

14 A. Videos of Benton County Commission meeting dated February 17, 2004, May  
15 17, 2004, and June 21, 2004.

16 B. Statement of Robert Pace dated May 10, 2004.

17 11. PLAINTIFF'S WITNESSES.

18 A. Plaintiff will call:

19 1. Joseph Kyle

20 B. Plaintiff may call:

21 1. Robert Pace

22 2. Brenda Kyle

23 3. Jimmy Thornton  
24

1 4. Cecil Wells

2 5. Tim Vitt

3 6. Ricky Pafford

4 7. Jason Lowery

5 12. DEFENDANTS' WITNESSES.

6 A. Defendants will call:

7 1. Jimmy Thornton

8 B. Defendants may call:

9 1. Cecil Wells

10 2. Dale Cunningham

11 3. Murlene Steinbuck

12 4. Rebuttal Exhibits

13 13. DEFENDANTS' EXHIBITS.

14 A. Plaintiff's Deposition

15 B. Web postings and comments made by the Plaintiff on  
16 www.bentoncountyissues.com.

17 C. Web postings and comments made by the Plaintiff on  
18 www.thorntonism.com.

19 D. Minutes of County Commission meetings since May 2004.

20 E. Copies of convictions/criminal history records of Joseph Kyle.

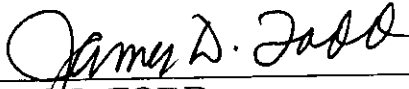
21 F. Rebuttal or impeachment exhibits.

22 14. MISCELLANEOUS MATTERS AND ESTIMATED LENGTH OF TRIAL.

23 This is a jury trial. The Plaintiff is requesting a VCR/DVD player to show various  
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1 videos of County Commission meetings. The parties estimate the trial will take  
2 approximately two days.

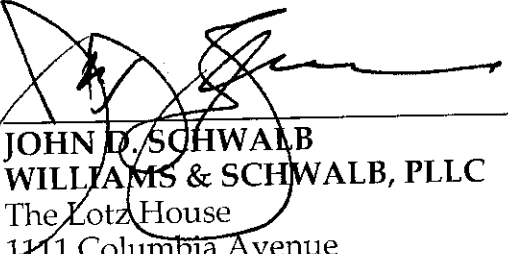
3 **IT IS SO ORDERED.**

4  
5   
6 **JAMES D. TODD**  
7 **United States District Judge**

3 October 2005

8 **PREPARED AND APPROVED FOR ENTRY:**

9   
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15 **Attorney for Plaintiff**

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23 **Attorney for Defendants**  
24





## Notice of Distribution

This notice confirms a copy of the document docketed as number 30 in case 1:04-CV-01180 was distributed by fax, mail, or direct printing on October 3, 2005 to the parties listed.

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Honorable James Todd  
US DISTRICT COURT